MENTERI SUMBER MANUSIA & ORS

v.

KESATUAN KEBANGSAAN PEKERJA-PEKERJA HOTEL, BAR DAN RESTAURANT SEMENANJUNG MALAYSIA & ANOTHER APPEAL

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
ABDUL MALEK AHMAD JCA
AHMAD FAIRUZ JCA
[CIVIL APPEAL NO: W-01-45 OF 1995]
3 JULY 1997

LABOUR LAW: *Trade Union - Recognition - Whether method of verification under Industrial Relations Regulations 1980, s. 65(2) ultra vires Trade Union Act 1959 - Whether decision of Director-General of Trade Union to apply reg. 65(2) of the Regulations unreasonable*

ADMINISTRATIVE LAW: *Judicial review - Wednesbury unreasonableness - Whether result obtained using prescribed method under reg. 65(2) of Regulations was within "Wednesbury unreasonableness" test - Whether trial judge misdirected in granting certiorari and mandamus*

CIVIL PROCEDURE: *Appeal - Decision of trial judge - Whether proper procedure adopted before coming to decision - Whether decision flawed*

CONSTITUTIONAL LAW: *Constitution - Whether decisions of Minister of Human Resources and Director General of Trade Unions infringed Federal Cconstitution - Whether secret ballot procedure provided by reg. 65(2) of the Regulations infringed Federal Constitution - Whether could be considered at appellate level when not argued before court at first instant*

The National Union of Hotel, Bar & Restaurant Workers of Semanjung Malaysia ('the union') had sought recognition from CDL (Malaysia) Sdn Bhd ('the hotel') to represent in collective bargaining its members who were employed by the hotel. To obtain recognition for itself, it prepared and submitted to the hotel a Form A as prescribed by the Industrial Relations Regulations 1980 ('the Regulations'). The hotel could either grant the recognition sought or resort to the procedure set out in s. 9(3) of the Industrial Relations Act 1967 ('the Act'). It decided to follow the latter course. The hotel wrote to the Director General of Industrial Relations ('DGIR') who then wrote to the Director General of Trade Unions ('DGTU') requesting that a membership check among the workers of the hotel be carried out. The DGTU

stipulated a date to carry out the determination by means of secret ballot. It was found that, applying the formula prescribed by reg. 65(2) of the Regulations, the percentage produced by the secret ballot was less than the majority, which was 50% plus 1 of the hotel's workmen. The union, upon the hotel's refusal to recognise it, wrote to the Minister of Human Resources ('the Minister') asking him to give a decision on the matter. The Minister, acting under s. 9(5) of the Act, rejected the union's claim for recognition. The union applied for an order of *certiorari* to quash the decision of the Minister and for *mandamus* directing the Minister, the DGIR and the DGTU to conduct a membership verification examination under reg. 65(1) of the Regulations and citing that reg. 65(2) of the Regulations was *ultra vires* the Trade Unions Act 1959 ('the TUA'). The judge allowed the application but ruled that reg. 65(2) of the Regulations was not *ultra vires* the TUA. The instant appeals were brought by the Minister, the DGIR and the DGTU in the first appeal and the hotel in the second appeal against the order. It was argued for the appellants that the judge had erred in the approach he took in the case; that the method prescribed in reg. 65(2) of the Regulations was not tainted with "Wednesbury unreasonableness"; that the decision of the DGTU did not produce an unreasonable result; and hence it was irrelevant that reasons were not given as to why reg. 65(2) of the Regulations was chosen.

Held:
Per Gopal Sri Ram JCA

[1] The court was in agreement with the learned judge's decision that reg. 65(2) of the Regulations was not *ultra vires* the TUA. It was not argued before the court at first instance why the provision as alleged by the respondent offended arts. 5, 8 and 10 of the Federal Constitution. Hence the appellate court, in accordance with settled principles that govern the taking of fresh points not canvassed at first instance, had declined to consider it.

[2] "Wednesbury unreasonableness" applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who has applied his mind to the question to be decided can arrive at it.

[2a] On the facts of the case, no unfair or unjust result was obtained applying the method prescribed by reg. 65(2) of the Regulations. Consequently, the decision in the present case did not come within the "Wednesbury unreasonableness" test.

[3] It is axiomatic that a reasonable decision may often produce a result that is adverse to one or more parties who are affected by it. An unfair result does not make a decision unreasonable, because unfairness must be gauged by reference to the decision itself.

[3a] The hotel's workmen were left to decide whether they wanted the union to represent them in collective bargaining and they announced their decision in a democratic way. Therefore, the decision of the DGTU was not unreasonable when viewed against the facts of the case.

[4] The learned judge had cited the correct law but had misapplied it to the facts. The judge ought to have asked whether the decision was unreasonable in the sense in which the expression is understood in administrative law. If the answer had been in the affirmative, then only should he have proceeded to consider the materiality or relevance of the failure on the part of the decision maker to provide a reason. As the learned judge had not adopted this approach, the judgment at first instance was fatally flawed by a misdirection on his part.

[5] The secret ballot procedure did not defeat the right of the union and did not infringe the doctrine encompassed in art. 10 of the Federal Constitution. The instant case was not one where the workmen had been deprived of the right to livelihood, or to be associated with others in their trade. None of the constitutional provisions had been infringed by the decision of the Minister or the DGTU. Therefore, the constitutional provisions referred to by the respondent were not relevant to the appeal.

[Appeal allowed; orders of certiorari and mandamus set aside.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restaurant Semenanjung Malaysia ('Kesatuan tersebut') telah memohon pengiktirafan daripada CDL (Malaysia Sdn Bhd. ('hotel tersebut'), agar dapat mengemukakan tawaran secara kolektif, ahli-ahlinya yang berkhidmat dengan hotel tersebut. Untuk mendapatkan pengiktirafan bagi dirinya sendiri, ianya telah menyediakan dan mengemukakan kepada hotel tersebut, Borang A sepertimana yang ditetapkan oleh Peraturan Perhubungan Perindustrian 1980 ('peraturan tersebut'). Hotel tersebut boleh memberikan pengiktirafan yang dipohon atau berpaling kepada prosedur yang dibentangkan dalam s. 9(3) Akta Perhubungan Perindustrian 1967 ('Akta tersebut'). Ianya membuat keputusan untuk mengikuti jalan yang terkemudian. Hotel tersebut telah menulis kepada Ketua Pengarah Perhubungan Perindustrian ('DGIR') yang kemudiannya telah menulis kepada Ketua Pengarah Kesatuan Sekerja ('DGTU') memohon, supaya keahlian di kalangan

pekerja-pekerja hotel tersebut, dijalankan. DGTU telah menetapkan satu tarikh untuk menjalankan penentuan tersebut melalui satu cabutan rahsia. Adalah didapati bahawa dengan memakai formula yang ditetapkan oleh per. 65(2) peraturan tersebut, peratusan yang dihasilkan oleh cabutan rahsia itu adalah kurang daripada majoriti, yang mana adalah 50% tambah 1, pekerja-pekerja hotel tersebut. Atas keengganan hotel tersebut mengiktirafkannya, Kesatuan telah menulis kepada Menteri Sumber Manusia ('Menteri tersebut') meminta beliau memberikan satu keputusan mengenai perkara itu. Menteri, bertindak di bawah s. 9(5) Akta, telah menolak tuntutan Kesatuan tersebut untuk pengiktirafan. Kesatuan tersebut telah memohon untuk mendapatkan perintah *certiorari* bagi membatalkan keputusan Menteri dan untuk mandamus yang mengarah Menteri, DGIR dan DGTU untuk menjalankan pemeriksaan penentusahan keahlian di bawah per. 65(1) peraturan tersebut dan menyebut bahawa per. 65(2) peraturan tersebut adalah *ultra vires* Akta Kesatuan Sekerja 1950 ('TUA tersebut'). Hakim telah membenarkan Perintah tersebut tetapi memutuskan bahawa per. 65(2) peraturan tersebut bukannya *ultra vires* TUA tersebut. Rayuan semasa ini telah dikemukakan oleh Menteri, DGIR dan DGTU dalam rayuan pertama dan oleh hotel dalam rayuan kedua terhadap Perintah tersebut. Ianya telah dihujahkan untuk perayu-perayu bahawa hakim tersebut telah tersalah pertimbangan dalam pendekatan yang telah beliau ambil dalam kes tersebut; bahawa cara yang ditetapkan dalam per. 65(2) peraturan tersebut telah tidak tercemar dengan "Wednesbury unreasonablesness"; dan bahawa keputusan DGTU tidak menghasilkan suatu keputusan yang tidak wajar; oleh itu ianya adalah tak relevan bahawa alasan-alasan telah tidak diberikan mengenai mengapakah per. 65(2) peraturan tersebut telah dipilih.

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Mahkamah menyetujui keputusan yang dibuat oleh hakim yang bijaksana bahawa per. 65(2) peraturan tersebut tidak *ultra vires* TUA. Ianya telah tidak dihujahkan dalam mahkamah yang awal, mengapa peruntukan sepertimana yang didakwa oleh responden, menyalahi artikel 5, 8 dan 10 Perlembagaan Persekutuan. Oleh itu, mahkamah rayuan, menurut prinsip-prinsip yang telah ditetapkan yang mengawal pengambilan perkara-perkara baru yang tidak dikemukakan pada awalnya, telah enggan untuk mempertimbangkannya.

[2] "Wednesbury unreasonableness" terpakai kepada keputusan yang amat luar biasa dalam menentang logik atau standard moral yang diterima bahawa tidak terdapat seseorang yang waras yang telah memunpukan pemikirannya kepada persoalan yang harus diputuskan itu boleh mencapainya.

[2a] Berdasarkan fakta-fakta kes itu, tiada hasil yang tidak adil telah dicapai dalam memakai cara yang ditetapkan oleh per. 65(2) peraturan tersebut. Akibatnya keputusan dalam kes semasa ini, tidak terlingkung di dalam ujian "Wednesbury unreasonableness"

[3] Ianya jelas benar bahawa sesuatu keputusan yang wajar kerapkali menghasilkan sesuatu keputusan yang bertentangan kepada satu atau pihak-pihak yang lebih yang terjejas olehnya. Sesuatu hasil yang tidak adil tidak sepatutnya membuat keputusan yang tidak wajar, kerana ketidak-adilan mesti diukur melalui rujukan kepada keputusan itu sendiri.

[3a] Pekerja-pekerja hotel itu telah dihendaki membuat keputusan mereka sendiri samada mereka mahu Kesatuan tersebut mewakili mereka dalam tawaran secara kolektif dan mereka telah mengumumkan keputusan mereka dengan cara yang demokratik. Dengan itu, keputusan DGTU bukannya tidak wajar apabila dipandang berdasarkan fakta-fakta kes tersebut.

[4] Hakim yang bijaksana telah menyebut undang-undang yang betul tetapi telah tersalah memakainya kepada fakta-fakta tersebut. Hakim tersebut seharusnya menanyakan, samada keputusan itu tidak wajar menurut maksud di mana tanggapan itu difahami dalam undang-undang pentadbiran. Jika jawapannya dalam bentuk mengiakannya, maka hanya dengan itu beliau seharusnya meneruskan untuk menimbang sifat material atau perkaitan kegagalan itu, samada pihak pembuat keputusan pula haruslah memberikan alasannya. Oleh kerana hakim yang bijaksana telah tidak menerima pakai pendekatan itu, hakim yang awal telah tersalah pertimbangan dengan cara yang memudaratkan.

[5] Prosedur cabutan rahsia itu tidak mengalahkan hak Kesatuan tersebut dan tidak melanggari doktrin, yang diliputi dalam art. 10 Perlembagaan Persekutuan. Kes semasa bukannya kes di mana pekerja telah dilucut hak sara hidup, atau dikaitkan dengan orang-orang lain dalam bidang mereka. Tidak satu pun daripada peruntukan-peruntukan Perlembagaan telah dilanggari oleh keputusan Menteri atau DGTU tersebut. Dengan itu Peruntukan-Peruntukan perlembagaan yang telah dirujuk oleh responden tidak relevan dengan rayuan tersebut.

[Rayuan dibenarkan.]

Cases referred to:

Council for Civil Service Union v. Minister for the Civil Service [1985] AC 374 ***(foll)***

Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals [1997] 1 CLJ 665 ***(refd)***

Padfield v. Minister of Agriculture [1968] AC 997 ***(refd)***

R v. Secretary of State for Trade & Industry ex p Lonrho [1989] 2 All ER 609 ***(refd)***

Tan Teck Seng v. Suruhanjaya Pendidikan Malaysia [1996] 2 CLJ 771 ***(refd)***

Legislation referred to:

Federal Constitution arts 5, 8, 10

Industrial Relations Act 1967, ss. 9(3), (4C), (5)

Industrial Relations Regulations 1980, reg. 65(1), (2)

[Appeal from High Court, Kuala Lumpur; Originating Motion No R2-25-20-94]

Civil Appeal No W-01-45-1995

For the appellants - Ahmad Kamal Md Shahid, SFC

For the respondent - Tommy Thomas & Mubashir Mansor; M/s Skrine & Co

Civil Appeal No W-02-418-1995

For the appellant - VT Nathan (Rutheran Sivagnanam with him); M/s Shearn Delamore & Co

For the respondent - Tommy Thomas & Mubashir Mansor; M/s Skrine & Co

JUDGMENT

Gopal Sri Ram JCA:

There are two appeals before us. Both are brought against the same decision of the High Court in Kuala Lumpur. In the first appeal the appellants are the Minister of Human Resources ('the Minister'), the Director General of Industrial Relations ('the DGIR'), and the Director General of Trade Unions ('the DGTU'). In the second appeal the appellant is CDL Hotels (Malaysia) Sdn. Bhd. which is the owner of an hotel in Kuala Lumpur called "The Regent". We will, for convenience, refer to the appellant in the second appeal simply as "the Hotel". The common respondent to both appeals is the National Union of Hotel, Bar and Restaurant Workers of Semenanjung Malaysia ('the Union'). It is common ground that several employees of the hotel are, and were at all material times, members of the union.

The Union wanted to represent, in collective bargaining, such of its members who were employed by the Hotel in order to negotiate and conclude the terms and conditions of their employment with the Hotel. It could not do so unless and until it received recognition from the hotel. In order to obtain recognition, it had to demonstrate that it represented a majority of the Hotel's workmen. The expression "majority" in this context, in accordance with settled industrial practice, refers to 50 % and 1 of the Hotel's workmen. In due course the Union took steps to obtain recognition for itself.

On 9 March 1993 it prepared and submitted to the Hotel Form A as prescribed by the Industrial Relations Regulations 1980 ('the Regulations'). The Hotel had a choice on receiving this form. It could either grant the recognition sought or resort to the procedure set out in s. 9(3) of the Industrial Relations Act 1967 ('the Act'). The Hotel decided to follow the latter course.

On 29 March 1993, it wrote to the DGIR requesting for a secret ballot to be held. That letter was copied to the Union. Then on 19 May 1993 the DGIR wrote to the DGTU requesting the latter to carry out a membership check for the purpose of determining the percentage of the Union's membership among workmen of the Hotel in respect of whom recognition was sought. On 8 June 1993 the DGTU wrote to the Union and the Hotel to inquire which method the parties proposed in order to make the determination. It is, we think, useful at this stage to say a word or two about the methods prescribed by the regulations.

Regulation 65 of the regulations prescribes two methods by which membership is to be ascertained. That regulation is in the following terms:

> 65. Formula to ascertain percentage of membership:
>
> (1) In the case of a membership verification exercise, the percentage of membership shall be calculated according to the following formula:
>
> $$\frac{\text{total number of valid members as at the date of claim}}{\text{total number of workmen in respect of whom recognition is being sought as at the date of claim}} \times 100\%$$
>
> (2) In the case of a secret ballot, the percentage of membership shall be calculated according to the following formula:
>
> $$\frac{\text{number of votes indicating membership}}{\text{number of workmen entitled to vote}} \times 100\%$$

The next event took place on 23 June 1993. On that date, the Union wrote to the DGTU informing him that it wanted to have the percentage of its membership with the Hotel to be ascertained by means of a membership verification exercise. The reason advanced by the Union for its request was that forty of its members had resigned from the Hotel making it difficult for the Union to locate them.

On 6 July 1993 the DGTU wrote to the Union and the Hotel informing them that he had decided to make his determination by means of a secret ballot as prescribed by reg. 65(2). He, however, did not advance any reasons for his choice.

On 28 July 1993, the DGTU consulted representatives from both the Union and the Hotel, and, on 30 July 1993 issued a notice to the parties stipulating 26 August 1993 as the date on which the secret ballot would be conducted at the premises of the Hotel. The secret ballot was conducted on 26 August 1993 in the presence of representatives of both parties, with the Union representative entering a protest. The secret ballot revealed that 277 votes had been cast, of which six were spoilt: 244 votes were in favour of Union representation while 27 were against such representation. Applying the formula prescribed by reg. 65(2), the percentage produced by the secret ballot was 37.48%. This was, of course, insufficient to support the Union's claim for recognition. After obtaining the result, the DGTU inquired of the Hotel whether it intended to recognise the Union. Unsurprisingly, the Hotel declined.

Then, on 8 October 1993, the Union wrote to the Minister asking him to give his decision upon the matter. The DGTU, acting under s. 9(4C) of the Act, also notified the Minister, as the question of recognition had not been resolved. The Minister, acting under s. 9(5) of the Act gave his decision on 16 February 1994. He rejected the Union's claim for recognition. The union was dissatisfied with the Minister's decision. It applied for an order for *certiorari* to quash that decision and for a *mandamus, inter alia,* directing the Minister, the DGIR and the DGTU to conduct a membership verification exercise under reg. 65(1).

The learned judge who heard the application granted the order. He did so principally on the ground that the DGTU had not given reasons for selecting the secret ballot method in order to make the determination. However, the learned judge rejected the Union's alternative submission that reg. 65(2) was *ultra vires* the Trade Union Act 1959 and therefore void. Before proceeding any further, we wish to express our agreement with his conclusion on this point. In our judgment reg. 65(2) is not *ultra vires* the Trade Unions Act 1959.

In this court, Mr T Thomas, counsel for the Union, sought to argue that reg. 65(2) in any event provided for an unfair procedure. He said that in the light of the jurisprudence that has developed over the last year or two, the impugned provision ought to be struck down as offending arts. 5, 8 and 10 of the Federal Constitution. Now, this is a serious argument. It is a matter upon which mature argument and consideration are called for. It is a point on which we would have liked to have had the learned judge's views. But it was never argued before him. We are therefore deprived of the benefit of the

learned judge's opinion on the matter. In accordance with settled principles that govern the taking of fresh points not canvassed at first instance, we respectfully decline therefore to enter upon a consideration of this argument.

We now turn to the arguments of the appellants. It was submitted both by Encik Ahmad Kamal, Senior Federal Counsel appearing on behalf of the appellants in the first appeal and Mr. V.T. Nathan of counsel for the Hotel that the learned judge had fallen into error in the approach that he took in the case. We do not think that we do any injustice to counsel before us if we summarise their submissions in support of the appeal as follows:

(1) The decision of the DGTU to make his determination by resorting to the method prescribed by reg. 65(2), was not tainted with what it has come to be known as "Wednesbury unreasonableness". It was an entirely reasonable decision;

(2) The judge was wrong in striking down the Minister's decision merely because the DGTU had failed to give reasons for making the choice that he did. The duty to give reasons and the legitimate expectation for such reasons or the failure to give reasons are relevant only where the decision itself is unreasonable. But where the decision is in itself reasonable, these are irrelevant matters;

(3) The decision in this case was reasonable because there is nothing to show, evidentially speaking, that the result would have been any different, and in the Union's favour, if the membership verification exercise method prescribed by reg. 65(1) had been adopted. Even if one were to take into account the forty members mentioned by the Union in its letter to the DGTU, the required majority would still have not been obtained to warrant recognition.

So much for the arguments in support of the appeals.

In opposing the appeal, Mr Thomas has argued that the formula prescribed by reg. 65(2) when applied to the facts of the present case produced an unjust and unfair result. Resorting to the method prescribed by reg. 65(1) would have produced a fairer result. In these circumstances, the DGTU ought to have explained why he decided to adopt the second method prescribed by reg. 65 rather than the first. Since neither the DGTU nor the Minister gave any reasons, it must be assumed in the circumstances, that they had no good reasons for choosing a method that produced an incongruous and unfair result. The learned judge, Mr. Thomas, argued, was entirely correct in making the order that he did.

Having heard counsel for the better part of two days; yesterday and the day before; and having given this matter our most anxious consideration, we must express our regret at being unable to agree with Mr Thomas' arguments. We are in entire agreement with the submissions made on behalf of the appellants before us.

There is, in our judgment, on the facts of this case, no unfair or unjust result by the application of the method prescribed by reg. 65(2). As pointed out by Senior Federal Counsel and Mr. Nathan, even if the votes of the forty members who had left had been taken into account, no favourable result would have been produced to the Union. In our judgment, the workmen employed by the Hotel were entitled to exercise their franchise or to refrain from exercising it as they chose to. It was for them to decide whether the Union ought to represent them in the Hotel. In a democracy like ours, one of the most valuable rights is the right to vote as well as the right to withhold one's vote. Viewed from this broader perspective and taking into account a workman's right enshrined in arts. 5, 8 and 10 of the Federal Constitution, it is clear that there was no unreasonable decision in the Wednesbury sense in this case.

To remind ourselves, the "Wednesbury unreasonableness" test, restated by Lord Diplock in Council for *Civil Service Union v. Minister for the Civil Service* [1985] AC 374, 410 is as follows:

> By 'irrationality' I mean what can now be succinctly referred to as "Wednesbury unreasonableness" (*Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v. Bairstow* [1956] AC 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. 'Irrationality' by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.

In our judgment the decision in the present case does not come within the test formulated in the above quoted passage.

It is axiomatic that a reasonable decision may often produce a result that is adverse to one or more parties who are affected by it. An unfair result does not necessarily make a decision unreasonable because unfairness must be

gauged by reference to the decision itself, which may or may not include the consequences of such decision, depending upon the circumstances of each case.

On the facts of the present case, the DGTU left it to the Hotel's workmen to decide whether they wished the Union to represent them in collective bargaining. The workmen announced their decision in a democratic fashion. The decision of the DGTU is therefore, when viewed against the facts of this case, not unreasonable.

The learned judge citing *Padfield v. Minister of Agriculture* [1968] AC 997 held that the absence of reasons in the present case concluded the matter in the Union's favour. In our judgment the learned judge having cited the correct law misapplied it to the facts before him. This is apparent from the fact that although he quoted a passage from the speech of Lord Keith of Kinkel in *R v. Secretary of State for Trade & Industry ex p. Lonrho* [1989] 2 All ER 609 to the following effect:

> The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision

The learned judge nevertheless failed to give effect to the proposition, contained in that passage. He ought to have asked himself the question whether the decision was unreasonable in the sense in which the expression is understood in administrative law. Having done so, and if he had given an affirmative answer, then, and then only, ought he to have proceeded to consider the materiality or relevance of the failure on the part of the decision maker to provide reasons. Since the learned judge did not adopt this approach, but in fact adopted quite the opposite approach, we must with respect hold that his conclusions have been fatally flawed by a misdirection on his part.

Mr. Thomas argued that the secret ballot procedure, when applied to the circumstances of the case, defeats the right of the Union and infringes the wholesome doctrine encompassed in art. 10 of the Federal Constitution. We respectfully do not agree. This is not a case where the workmen have been deprived of their right to livelihood or to be associated with others in their trade. This court in *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan And Another Appeal* [1996] 1 MLJ 481 has held that "life" in art. 5(1) of the Federal Constitution includes the right to livelihood. And we have in *Tan Teck Seng v. Suruhan Jaya Pendidikan Malaysia* [1996] 2 CLJ 771 recognised the

wide sweep of art 8(1) of the Federal Constitution and the beneficial effects that it confers upon citizens of this country.

But as we have just observed, none of these constitutional provisions has been infringed by the decision of the Minister or the DGTU in the present instance. The constitutional provisions referred to by Mr Thomas are therefore not relevant to the appeals before us.

For the reasons we have given, the appeal is allowed. The orders of *certiorari* and *mandamus* are set aside. The order for costs is also set aside. There will be no order as to costs here and in the court below. The deposit of the hotel in Civil Appeal No. 02-418-95 is refunded. We direct counsel to attend before us tomorrow to consider the making of such consequential orders as are necessary in regard to the Minister's decision.

4 July 1997

In addition to the orders made on 3 July 1997, it is further ordered that all steps taken and decisions made after 19 June 1995 are quashed, including the Minister's order of recognition dated 9 December 1996.

Reported by Michele Saw